

MTC EXHIBIT “G”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CALEB BUTLER and JEREMY
PENNINGTON
Plaintiffs,

v.

BNSF RAILWAY COMPANY,
Defendant.

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Case Number 1:22-cv-00367-MJT

DEFENDANT BNSF RAILWAY COMPANY'S PRIVILEGE LOG

Pursuant to Federal Rule of Civil Procedure 26, Defendant BNSF Railway Company serves its Privilege Log regarding Plaintiff Butler's Request for Production.

Request No.	Bates No.	Description of Documents Withheld	Objection
Butler's Fourth RFP No. 4	02254	BNSF is withholding a communication dated 8/19/21 4:55 pm from Chad Nesteby to Scott Cleveland, Dentin Chapman, Dustin McDonald, Denise Fleming, (BNSF Claims Representative), William Trailer, and Vahid Morris. The email is dated after the incident and after Plaintiff Butler's report of injury. The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury. All of the participants are BNSF management and senior management. The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation. BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.	Work Product / Investigative Privilege / Anticipation of Litigation
BNSF 02253-02254	02253-02254	BNSF is withholding a chain of communication dated 8/20/21 between Janssen Thompson and his supervisor that includes the email from Nesteby above. The email chain is dated after the incident and after Plaintiff Butler's report of injury.	

		<p>The email chain includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email chain discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
<p>Butler's Fourth RFP No. 4</p> <p>BNSF 02255-02256</p>	<p>02256</p> <p>02255-02256</p>	<p>Duplicate of BNSF 02254:</p> <p>BNSF is withholding a communication dated 8/19/21 4:55 pm from Chad Nesteby to Scott Cleveland, Dentin Chapman, Dustin McDonald, Denise Fleming, (BNSF Claims Representative), William Trailer, and Vahid Morris.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p> <p>BNSF is withholding a communication chain dated 8/19/21 9:41 pm from Dentin Chapman, BNSF Superintendent of Operations to BNSF employees Chad Nesteby, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming, BNSF Claims Representative, William Trailer, Vahid Morris, and Janssen Thompson.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p>	<p>Work Product / Investigative Privilege / Anticipation of Litigation</p>

	02255	<p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p> <p>BNSF is withholding a communication chain dated 8/20/21 12:29 pm from Chad Nesteby, BNSF Terminal Trainmaster to BNSF employees Dentin Chapman, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming, BNSF Claims Representative, William Trailer, Vahid Morris, Janssen Thompson, and Eluterio Vargas, BNSF Claim Representative.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representatives who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02256	<p>BNSF is withholding a communication chain dated 8/20/21 12:29 pm from Chad Nesteby, BNSF Terminal Trainmaster to BNSF employees Dentin Chapman, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming, BNSF Claims Representative, William Trailer, Vahid Morris, Janssen Thompson, and Eluterio Vargas, BNSF Claim Representative.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representatives who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p>	

		BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.	
Butler's Fourth RFP No. 4 BNSF 02257- 02258	02257- 02258	<p>BNSF is withholding a communication chain beginning with an email dated 10/12/21 10:20 am from Eluterio Vargas, BNSF Claim Representative to Dentin Chapman, BNSF Superintendent of Operations.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email was prepared by one of the BNSF Claims Representatives who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses the status of Mr. Vargas' investigation of the claim in anticipation of litigation. BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	Work Product / Investigative Privilege / Anticipation of Litigation
	02257	<p>BNSF is withholding a communication dated 10/12/21 10:24 am from Dentin Chapman, BNSF Superintendent of Operations to Scott Cleveland, Superintendent Safety & Operating Practices forwarding the information from Eluterio Vargas, BNSF Claim Representative.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The forwarded email was prepared by one of the BNSF Claims Representatives who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses the status of Mr. Vargas' investigation of the claim in anticipation of litigation. BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02257	<p>BNSF is withholding a communication dated 10/13/21 12:32 pm from Dentin Chapman, BNSF Superintendent of Operations to William Trailer, BNSF Mechanical Foreman forwarding the</p>	

		<p>information from Eluterio Vargas, BNSF Claim Representative.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The forwarded email was prepared by one of the BNSF Claims Representatives who investigated Plaintiff Butler's report of injury.</p> <p>The email discusses the status of Mr. Vargas' investigation of the claim in anticipation of litigation. BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
<p>Butler's Fourth RFP No. 4</p> <p>BNSF 02259-02262</p>	<p>02262</p> <p>02261</p>	<p>Duplicate of BNSF 002254:</p> <p>BNSF is withholding a communication dated 8/19/21 4:55 pm from Chad Nesteby to Scott Cleveland, Dentin Chapman, Dustin McDonald, Denise Fleming, (BNSF Claims Representative), William Trailer, and Vahid Morris.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury. All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p> <p>Duplicate of BNSF 002255:</p> <p>BNSF is withholding a communication chain dated 8/19/21 9:41 pm from Dentin Chapman, BNSF Superintendent of Operations to BNSF employees Chad Nesteby, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming, BNSF Claims Representative, William Trailer, Vahid Morris, and Janssen Thompson.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury. All of the participants are BNSF management and senior management.</p>	<p>Work Product / Investigative Privilege / Anticipation of Litigation</p>

		<p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02261	<p>Duplicate of BNSF 002255:</p> <p>BNSF is withholding a communication chain dated 8/20/21 12:29 pm from Chad Nesteby, BNSF Terminal Trainmaster to BNSF employees Dentin Chapman, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming, BNSF Claims Representative, William Trailer, Vahid Morris, Janssen Thompson, and Eluterio Vargas, BNSF Claim Representative.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representatives who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02260	<p>BNSF is withholding a communication chain dated 8/20/21 from Vahid Morris responding to Janssen Thompson.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The forwarded email was a communication between senior management to investigate Plaintiff Butler's report of injury.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p>	

		<p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02259-02260	<p>BNSF is withholding a communication dated 08/21/21 among Chad Nesteby, Bob Beals and Damon Williams.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation Plaintiff Butler's report of injury.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02259	<p>BNSF is withholding a communication dated 08/21/21 11:07 am from BNSF Damon Williams to Chad Nesteby, Bob Beals, and Dentin Chapman.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email responds to the email of Chad Nesteby above regarding investigation Plaintiff Butler's report of injury.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02259	<p>BNSF is withholding a communication dated 08/21/21 10:18 pm from Dentin Chapman to Damon Williams, Chad Nesteby, Vahid Morris, Bob Beals, and Dustin McDonald.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email responds to Damon Williams regarding investigation information regarding Plaintiff Butler's report of injury.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	

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	02263	<p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p> <p>BNSF is withholding a communication chain dated 8/20/21 6:33 am from William Trailer to Dentin Chapman, Chad Nesteby, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming (BNSF Claims Representative), Vahid Morris, and Janssen Thompson.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representatives who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email responds to Dentin Chapman's email of 8/19/21 regarding investigation strategy and status of items to accomplish for investigation of the claim in anticipation of litigation.</p>	
<p>Butler's Fourth RFP No. 4</p> <p>BNSF 02265-02267</p>	02266-02267	<p>Duplicate of BNSF 002254:</p> <p>BNSF is withholding a communication dated 8/19/21 4:55 pm from Chad Nesteby to Scott Cleveland, Dentin Chapman, Dustin McDonald, Denise Fleming, (BNSF Claims Representative), William Trailer, and Vahid Morris.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	Work Product / Investigative Privilege / Anticipation of Litigation

	02266	<p>BNSF is withholding a communication chain dated 8/22/21 between Scott Cleveland and Dentin Chapman and includes the email 8/19/21 9:40 pm email from Dentin Chapman to Chad Nesteby, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming (BNSF Claims Representative), William Traylor, Vahid Morris, and Janssen Thompson.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes Chapman's communication to the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02265-02266	<p>BNSF is withholding a communication chain that includes an email dated 8/22/21 among Dentin Chapman, Scott Cleveland and Janssen Thompson.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes a summary of Chapman's communication to the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02265	<p>BNSF is withholding a communication chain between Janssen Thompson and Dentin Chapman regarding additional BNSF management personnel to be notified of status of investigation.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p>	

		<p>The email includes a summary of Chapman's communication to the BNSF Claims Representative who investigated Plaintiff Butler's report of injury. All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
<p>Butler's Fourth RFP No. 4</p> <p>BNSF 02268-02271</p>	<p>02270-02271</p> <p>02270</p>	<p>Duplicate of BNSF 002254: BNSF is withholding a communication dated 8/19/21 4:55 pm from Chad Nesteby to Scott Cleveland, Dentin Chapman, Dustin McDonald, Denise Fleming, (BNSF Claims Representative), William Trailer, and Vahid Morris.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury. All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p> <p>Duplicate of BNSF 02255: BNSF is withholding a communication chain dated 8/19/21 9:41 pm from Dentin Chapman, BNSF Superintendent of Operations to BNSF employees Chad Nesteby, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming (BNSF Claims Representative), William Trailer, Vahid Morris, and Janssen Thompson.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury. All of the participants are BNSF management and senior management.</p>	<p>Work Product / Investigative Privilege / Anticipation of Litigation</p>

		<p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02269	<p>Duplicate of BNSF 002255:</p> <p>BNSF is withholding a communication chain dated 8/20/21 12:29 pm from Chad Nesteby, BNSF Terminal Trainmaster to BNSF employees Dentin Chapman, Scott Cleveland, Dustin McDonald, Damon Williams, Denise Fleming (BNSF Claims Representative), William Trailer, Vahid Morris, Janssen Thompson, and Eluterio Vargas, BNSF Claim Representative.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representatives who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
	02268	<p>Duplicate of BNSF 002260:</p> <p>BNSF is withholding a communication chain dated 8/20/21 from Vahid Morris responding to Janssen Thompson.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The forwarded email was a communication between senior management to investigate Plaintiff Butler's report of injury.</p>	

	02268	<p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p> <p>BNSF is withholding a communication chain dated 8/21/21 among Dentin Chapman, Vahid Morris, Chad Nesteby, Dustin McDonald, and Jeff Madden.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email includes communications from the BNSF Claims Representative who investigated Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email discusses investigation strategy and items to accomplish for investigation of the claim in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	
<p>Butler's Fourth RFP No. 4</p> <p>BNSF 02272-02276</p>	02272-02276	<p>BNSF is withholding a communication chain dated 9/8/21 – 9/9/21 among Dentin Chapman, Janssen Thompson, Scott Cleveland, John Murphy (BNSF Labor Relations) and Paul Balanon (Senior General Attorney in BNSF's Law Department).</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>All of the participants are BNSF management and senior management.</p> <p>The email is dated after the incident and after Plaintiff Butler's report of injury.</p> <p>The email is a conversation seeking legal advice from Balanon and Balanon giving legal advice.</p> <p>The email also provides a summary of the investigation conducted concerning Plaintiff Butler's report of injury and findings of the investigation conducted in anticipation of litigation.</p> <p>BNSF asserts this communication is protected by the work product doctrine / investigative privilege because it was prepared in anticipation of litigation.</p>	<p>Attorney-Client Privilege</p> <p>Work Product / Investigative Privilege / Anticipation of Litigation</p>

		It is marked Privileged & Confidential.	
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Respectfully submitted,

/s/ Susan J. Travis

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**COUNSEL FOR RESPONDENT
BNSF RAILWAY COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on the **14th day of July, 2023**, that I have served all counsel of record electronically including:

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/s/ Susan J. Travis

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